HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 623 of 2007

Between:

The APSRTC, rep. by its Regional Manager,
Adilabad Town, Adilabad District & another

... Appellants

And

Sd. Esa Ali

... Respondent

:: J U D G M E N T ::

Counsel for the appellants : Smt. P. Rajani Reddy

Counsel for the respondent : Shri G. Ravi Mohan

August 10, 2007

Per G.S. Singhvi, CJ

The power of judicial review vested in the High Courts under Article 226 of the Constitution of India is not hedged with any condition or limitation. Its amplitude and reach is very wide. From **Dwaraka Nath v. ITO**[1] to **Anandi Mukta Sadguru S.M.V.S.J.M.S. Trust v. V.R. Rudani**[2], the Supreme Court has repeatedly held that the power vested in the High Courts to issue directions, orders or writs is meant for reaching injustice apart from protecting fundamental, constitutional and legal rights of every person. At the same time, the Superior Courts have also evolved several rules of self-imposed restraint and by now, it must be treated as settled law that the High Court will not entertain

belated petitions, decide contentious issues of facts or come to the rescue of a person who is guilty of contumacious conduct. The High Court will also decline to entertain writ petition if an effective alternative remedy is available to the petitioner. No straight-jacket formula has been evolved so far for deciding whether a petition should be thrown out on the ground of delay or the petitioner should be non-suited on the premise that he is guilty of latches, but broadly speaking, a petition filed after expiry of the limitation prescribed for filing civil suit for the similar cause has been treated as unreasonable.

In **State of M.P. v. Bhailal Bhai**[3], the Constitution Bench of the Supreme Court considered the issue of delay in the context of the claim made by the respondents for refund of the illegally collected tax and laid down the following propositions:

> "1) The special remedy provided in Art. 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil Court or to deny defence legitimately open in such actions. The power to give relief under Art. 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it.
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> 2) It is not easy nor is it desirable to lay down any rule for universal application. It may, however, be stated as a general rule that if there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the Court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases if will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil Court and to refuse to exercise in his favour the extra-ordinary remedy under Art. 226 of the Constitution.

3) The provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable."

A similar view was expressed, though in different words, by majority of another Constitution Bench in **Tilokchand Motichand v. H.B. Munshi**[4]. The propositions laid down in the majority judgment of the Supreme Court are extracted below:

"Utmost expedition is the sine qua non for such claims. The party aggrieved must explain satisfactorily all semblance of delay. No period can be indicated which may be regarded as the ultimate limit of action for that would taking upon itself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. I n India each case will have to be considered on its own facts. Avoidable delay affecting the merits of the claim, will disentitle a party to invoke the extraordinary jurisdiction.

The question is one of discretion for this Court to follow from case to case. This Court need not necessarily give the total time to the litigant to move this Court under Article 32, even though he may be within statutory limitation. Similarly in a suitable case this Court may entertain a petition even after limitation. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose."

The majority opinion expressed in **Tilokchand Motichand v. H.B. Munshi** (supra) was approved by a larger Bench in **Mafatlal Industries Ltd. v. Union of India**[5].

In service matters, the Courts have applied the rule of delay with greater rigor - **Rabindra Nath v. Union of India**[6], **P.S.**

Sadasivaswamy v. State of T.N.[7], **Roshan Lal v. International Airport Authority of India**[8], **Gian Singh Mann v. High Court of P & H**[9], **Union of India v. S.S. Kothiyal**[10], **Prafulla Kumar Pallai v. State of Orissa**[11], **A.J. Fernandis v. Divisional Manager, S.C. Rly.**[12], **K.A. Abdul Majeed v. State of Kerala**[13], **U.P. Jal Nigam v. Jaswant Singh**[14], and **Uttaranchal Forest Development Corpn. v. Jabar Singh**[15].

In **U.P. Jal Nigam v. Jaswant Singh** (supra), the Supreme Court considered the question whether the High Court was justified in granting relief to the employees on the basis of judgment in **Harwindra Kumar v. Chief Engineer, Karmik**[16], even though they had accepted the retirement and taken the monetary benefits and approached the Court after long lapse of time. While allowing the appeals, the Supreme Court referred to the earlier judgments in **State of Karnataka v. S.M. Kotrayya**[17], **Jagdish Lal v. State of Haryana**[18], **Union of India v. C.K. Dharagupta**[19], **Govt. of W.B. v. Tarun K. Roy**[20] and culled out the following statement of law contained in Halsbury's Laws of England:

> "In determining whether there has been such delay as to amount to laches, the chief points to be considered are:
> (*i*) acquiescence on the claimant's part; and
> (*ii*) any change of position that has occurred on the defendant's part.
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> Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he

has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

Their Lordships of the Supreme Court also invoked the principle of acquiescence and observed:

> "In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

The reason why the Courts are reluctant to give relief to a person who is not vigilant in seeking remedy against the alleged wrong done to him or violation of his legal, fundamental or other constitutional rights is that a direction, order or writ issued after long lapse of time will unsettle the settled rights or status of the parties or may cause injury to public interest. In service matters and matters involving levy, recovery and collection of tax, the rule of delay has been applied with greater rigour. This is perhaps in recognition of the fact that a direction given

by the Court after long lapse of time for fixation of seniority or promotion would adversely affect not only the rights of the individual employees, but the structure of the service. If a punishment imposed by the competent authority is set aside after long lapse of time, the employee who is benefited by reinstatement or otherwise is bound to crave for consequential benefits including promotion to the higher posts and if his claim is accepted, other persons who may or may not be parties before the Court to the initial litigation are adversely affected. In matters involving levy, collection and recovery of taxes, the public interest normally outweighs the individual interest and the Courts are extremely loath to exercise power in favour of a person who does not seek intervention of the Court within reasonable time. This is also the reason why the Courts have, while granting declaration of invalidity in the matter of levy and collection of tax, by and large applied the theory of unjust enrichment and refused to issue direction for refund of the tax already collected.

We have made a mention of the above-noted legal principles because after hearing learned counsel for the parties and perusing the record of the case, we are convinced that the learned Single Judge committed a serious error by accepting the respondent's prayer for quashing order dated 29.11.1993 in a petition filed after a long time gap of more than 13 years.

Sri G. Ravi Mohan, learned counsel for the respondent made strenuous efforts to convince us that even though his client had filed the writ petition after a long time gap of 13 years, the order under challenge may not be disturbed because the learned Single Judge granted relief keeping in view the judgment of the Supreme Court in **Kulwanth Singh Gill v. State of Punjab**[21] and the Division Bench

of this Court in **Depot Manager, A.P.S.R.T.C. v. K. Adi Reddy**[22], but we have not felt persuaded to agree with him. In our opinion, the unexplained delay of 13 years was fatal to the cause of the respondent and the learned Single Judge ought not to have entertained the writ petition much less allowed the same and modified the order of punishment moreso because, in the affidavit filed by him, the respondent did not even make an endeavour to explain the delay and the learned counsel could not offer any justification for his client's silence for more than one decade. Therefore, it is not possible to sustain the order under challenge.

There is another serious infirmity in the order of the learned Single Judge. Even if the learned Single Judge felt that the order of punishment passed by the Depot Manager was legally unsustainable, the only course open to him was to quash the order of punishment and leave the competent authority free to take proceedings against the writ petitioner in accordance with the relevant statutory regulations. It is settled law that in exercise of power under Article 226 of the Constitution of India, this Court cannot, except in rare cases, usurp the power of the disciplinary authority and invoke, directly or indirectly, the provisions of Section 11-A of the Industrial Disputes Act, 1947 or the doctrine of proportionality for substituting the penalty imposed by the employer.

In the result, the appeal is allowed, the order of the learned Single Judge is set aside and the writ petition filed by the respondent is dismissed.

As a sequel to disposal of the writ appeal, W.A.M.P.No. 1260 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

August 10, 2007

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[1] AIR 1966 SC 81
[2] AIR 1989 SC 1607
[3] AIR 1964 SC 1006
[4] (1969) 1 SCC 110
[5] (1997) 5 SCC 536
[6] AIR 1970 SC 470
[7] (1975) 1 SCC 152
[8] AIR 1981 SC 597
[9] (1980) 4 SCC 266
[10] (1998) 8 SCC 682
[11] 1999 SCC (L & S) 777
[12] (2001) 1 SCC 240
[13] (2001) 6 SCC 292

[14] (2006) 11 SCC 464

[15] (2007) 2 SCC 112

[16] (2005) 13 SCC 300

[17] (1996) 6 SCC 267

[18] (1997) 6 SCC 538

[19] (1997) 3 SCC 395

[20] (2004) 1 SCC 347

[21] 1990 (1) LLJ 635

[22] 2006 (4) ALD 501